

JOHN MORRISSEY,)
)
Plaintiff,)
)
vs.)
)
) Case No. 1:14-cv-00156-TWP-DKL
SPEEDWAY LLC,)
)
Defendant.)

This case was originally filed in Marion County Superior Court on July 3, 2013. In Indiana, civil complaints do not contain a demand for damages. Defendant Speedway LLC (“Speedway”) was served and sought an extension for filing an answer in state court. It then served interrogatories on Plaintiff John Morrissey (“Mr. Morrissey”). Within 30 days of receipt of Mr. Morrissey’s responses, Speedway removed this case to federal court on February 4, 2014, and Mr. Morrissey has moved for remand (Dkt. 7).

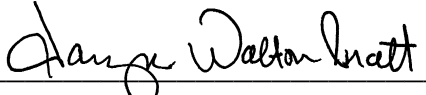
28 U.S.C. 1446(b)(2)(C)(3) provides that if the initial pleading is not removable, “a notice of removal may be filed within 30 days after receipt by the defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” Speedway contends that it first became aware of the scope of Mr. Morrissey’s damages when he responded to interrogatories. Thus, Speedway removed the case within 30 days as provided in 28 U.S.C. 1446(b).

The removing party has the burden of showing the amount in controversy—more than \$75,000—is satisfied by a preponderance of the evidence. *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 511 (7th Cir. 2006). Once shown, “a plaintiff can defeat jurisdiction only if it appears to a

legal certainty that the claim is really for less than the jurisdictional amount.” *Id.* (internal quotation marks omitted). Here, Speedway has shown by a preponderance of the evidence that Mr. Morrissey’s damages for back injury, knee injury, and bilateral knee surgery satisfies the amount in controversy to invoke this Court’s jurisdiction. Mr. Morrissey has not replied with any argument or evidence that his claim is less than the jurisdictional amount. Therefore, Mr. Morrissey’s Motion for Remand (Dkt. 7) is **DENIED**.

SO ORDERED.

Date: 04/25/2014


Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

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